IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.3077 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

UNION OF INDIA & ANR.

Versus

LILABEN PRAYAGJI & ORS.

Appearance:

1. Special Civil Application No. 3077 of 1999

MR JC SHETH for Petitioner Nos.1 & 2

MR CP JADHAV for Respondent Nos. 1, 2, 3 & 4

CORAM : MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 13/02/2003

ORAL JUDGEMENT

1. The petitioners have filed this petition being aggrieved of the judgement and award dated 22nd/25th September, 1998, passed by the Industrial Tribunal, Ahmedabad in Reference (ITC) No.75 of 1991, whereby the

learned Judge was pleased to hold that the retrenchment of the casual labourers, respondents herein, was illegal and unjust and hence, directed the first party (Railways), petitioners herein, to reengage them with back-wages and due status in the seniority list i.e. giving them proper placement in the seniority list, with all benefits admissible to them. The learned Judge was also pleased to award costs of Rs.1000=00 to the second party i.e. respondents herein. The learned Judge was pleased to order that the award be implemented within one month from the date of its publication.

2. The petition was filed on 22nd April, 1999. On 4th October, 1999, this Court issued `Rule', notice as to interim relief returnable on 22nd November, 1999, and granted ad-interim relief in terms of paragraph 7(b) with respect to the payment of back-wages alone.

3. Mr.J.C.Sheth, learned Advocate for the petitioners, stated that as there was no stay against the order of reinstatement, the order of reinstatement is complied with. He submitted that taking into consideration the fact that the respondent-workmen were terminated during March-1981 to September-1986 and they approached the Court only in the year, 1991, the Industrial Tribunal ought not to have granted back-wages. Taking into consideration the delay on the part of workmen, the Tribunal should have held that the entire claim is barred by delay and laches and in any case, they are not entitled for back-wages. Mr.J.C.Sheth also submitted that while considering the question of back-wages, the learned Judge has not assigned any valid reasons for awarding 100% back-wages. The submissions of Mr.Sheth do not deserve acceptance at the hands of this Court for the simple reason that the matter of awarding back-wages is in discretionary jurisdiction exercised by the learned Judge. The petitioners have not led any evidence about the gainful employment of the workmen. If any such evidence was led, there was no reason for the learned Judge not to discuss the same. Mr.Sheth submitted that what is required to be considered is that, awarding of back-wages costs avoidable burden on the public exchequer and, therefore, the awarding of back-wages should have been avoided by the learned Judge. But then, Mr.Sheth is not able to point out any cogent reason for which the establishment did not lead any evidence in this regard.

4. Taking into consideration the aspect of avoidable burden on the public exchequer, it is deemed fit that the award of the learned Judge be modified to a limited

extent. The back-wages awarded to the workmen be restricted from the date of the filing of the Reference. Order accordingly. The present petition is partly allowed.

5. Mr.C.P.Jadhav, learned Advocate for the respondents, submitted that respondent no.4 has already reached the age of superannuation and, therefore, she will not be able to get the benefit of being reengaged. He prayed that if the authorities are directed to pay the benefits of back-wages in a time frame, it will serve the ends of justice.

6. The Railways shall pay the back-wages within eight weeks from the date of receipt of this order. The benefits of the award shall be given to the respondent no.4 also, who has already reached the age of superannuation, from the date of the filing of the Reference till her reaching the age of superannuation.

Rule is made absolute to the aforesaid extent only. No order as to costs.

(Ravi R. Tripathi, J.)

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